

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABRAHAM HOLLEY,

Defendant.

Case No. CR-03-5311FDB

PROCEDURAL ORDER

This case comes before the court for consideration of resentencing pursuant to the remand of the Ninth Circuit Court of Appeals and *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005). A clarifying procedural order should now be reentered.

In accord with *Ameline*, each party may file a pleading addressing the sole question of whether the sentence imposed would have been materially different had the district court known that the sentencing guidelines were only advisory. The court is mindful that the burden of proof is on the defendant to prove the positive of the stated proposition, and the court assumes that the burden is by a preponderance of the evidence. Counsel should be mindful that the question at this point is not whether the defendant *should* have received a different sentence. Those questions may be addressed if a resentencing is ordered.


1 On review of the aforementioned pleadings, the presentence investigations, and transcripts of
2 the sentencing, (if available), the court will either grant resentencing, deny resentencing, or order oral
3 argument or an evidentiary hearing on whether there should be a resentencing.

4 ACCORDINGLY,

5 IT IS ORDERED:

- 6 (1) The parties shall file their pleadings as described above not later than December 21,
7 2005; and
8 (2) The Clerk of the Court is instructed to send uncertified copies of this Order to all
9 counsel of record and to any party appearing *pro se* at said party's last known
10 address.

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12 DATED this 1st day of December, 2005.

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15 FRANKLIN D. BURGESS
16 UNITED STATES DISTRICT JUDGE
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